

Department of Defense

§ 9901.504

and exclusive method for all nonbargaining unit employees to challenge a rating of record. A payout determination will not be subject to the reconsideration process.

(h) A bargaining unit employee may choose a negotiated grievance procedure or the administrative reconsideration process established under paragraph (g) of this section, but not both, to challenge his or her rating of record. An employee who chooses the administrative reconsideration process may not revert to a negotiated grievance procedure. A payout determination will not be subject to the negotiated grievance procedure. Any individual or panel reviewing a rating of record under a negotiated grievance procedure may not conduct an independent evaluation of the employee's performance, determine the appropriate share payout, or otherwise substitute his or her judgment for that of the rating official.

(i) A supervisor or other rating official may prepare an additional performance appraisal for the purposes specified in the applicable performance management system (e.g., transfers and details) at any time after the completion of the minimum period. Such an appraisal is not a rating of record.

(j) Implementing issuances will establish policies and procedures for crediting performance in a reduction in force in accordance with subpart F of this part (or other appropriate workforce shaping procedures for those not covered by subpart F of this part, such as National Guard Technicians under 32 U.S.C. 709).

Subpart E—Staffing and Employment

GENERAL

§ 9901.501 Purpose.

(a) This subpart sets forth policies and procedures for the establishment of qualification requirements; recruitment for, and appointment to, positions; and assignment, reassignment, detail, transfer, or promotion of employees, consistent with 5 U.S.C. 9902(a) and (k).

(b) The Secretary will comply with merit principles set forth in 5 U.S.C.

2301 and with 5 U.S.C. 2302 (dealing with prohibited personnel practices).

(c) The Secretary will adhere to veterans' preference principles set forth in 5 U.S.C. 2302(b)(11), consistent with 5 U.S.C. 9902(a) and (k).

§ 9901.502 Scope of authority.

When a specified category of employees, applicants, and positions is covered by the system established under this subpart, the provisions of 5 U.S.C. 3301, 3302, 3304, 3317(a), 3318 and 3319 (except with respect to veterans' preference), 3321, 3324, 3325, 3327, 3330, 3341, and 5112(a) are modified and replaced with respect to that category, except as otherwise specified in this subpart. In accordance with § 9901.105, the Secretary will prescribe implementing issuances to carry out the provisions of this subpart.

§ 9901.503 Coverage.

(a) This subpart applies to eligible DoD employees and positions in the categories listed in paragraph (b) of this section, subject to a determination by the Secretary under § 9901.102(b).

(b) The following employees and positions in DoD organizational and functional units are eligible for coverage under this subpart:

(1) Employees and positions who would otherwise be covered by 5 U.S.C. chapters 31 and 33 (excluding members of the Senior Executive Service); and

(2) Such others designated by the Secretary as DoD may be authorized to include under 5 U.S.C. 9902.

§ 9901.504 Definitions.

In this subpart—

Career employee means an individual appointed without time limit to a competitive or excepted service position in the Federal career service.

Initial probationary period has the meaning given that term in § 9901.103.

In-service probationary period has the meaning given that term in § 9901.103.

Promotion has the meaning given that term in § 9901.103.

Reassignment has the meaning given that term in § 9901.103.

Reduction in band has the meaning given that term in § 9901.103.

Temporary employee means an individual not on a career appointment

who is employed for a limited period of time not to exceed 1 year. The appointment may be extended, up to a maximum established by implementing issuances, to perform the work of a position that does not require an additional permanent employee.

Term employee means an individual not on a career appointment who is employed for a period of more than 1 year up to a maximum established by implementing issuances, when the need for an employee's service is not permanent.

Time-limited employee means an individual appointed to a position for a period of limited duration (e.g., term or temporary) in either the competitive or excepted service.

EXTERNAL RECRUITMENT AND INTERNAL PLACEMENT

§ 9901.511 Appointing authorities.

(a) *Competitive and excepted appointing authorities.* The Secretary may continue to use excepted and competitive appointing authorities and entitlements under chapters 31 and 33 of title 5, U.S. Code, Governmentwide regulations, or Executive orders, as well as other statutes, and those individuals will be given career or time-limited appointments, as appropriate.

(b) *Additional appointing authorities.* (1) The Secretary and the Director may enter into written agreements providing for new excepted and competitive appointing authorities for positions covered by the National Security Personnel System, including noncompetitive appointments, and excepted appointments that may lead to a subsequent noncompetitive appointment to the competitive service.

(2)(i) DoD and OPM will jointly publish a notice in the FEDERAL REGISTER when establishing a new competitive appointing authority or a new excepted appointing authority that may lead to a subsequent noncompetitive appointment to a competitive position in the career service. DoD and OPM will issue a notice with a public comment period before establishing such authority, except as provided in paragraph (b)(2)(ii) of this section.

(ii) If the Secretary determines that a critical mission requirement exists,

DoD and OPM may establish a new appointing authority as described in paragraph (b)(2)(i) of this section effective upon publication of a FEDERAL REGISTER notice without a preceding comment period. However, the notice will invite public comments, and DoD and OPM will issue another notice if the authority is revised based on those comments.

(3) The Secretary will prescribe appropriate implementing issuances to administer a new appointing authority established under paragraph (b) of this section.

(4) At least annually, a consolidated list of all appointing authorities established under this section and currently in effect will be published in the FEDERAL REGISTER.

(c) *Severe shortage/critical need hiring authority.* (1) The Secretary may determine that there is a severe shortage of candidates or a critical hiring need, as defined in 5 U.S.C. 3304(a)(3) and 5 CFR part 337, subpart B, for particular occupations, pay bands, career groups, and/or geographic locations, and establish a specific authority to make appointments without regard to § 9901.515. Public notice will be provided in accordance with 5 U.S.C. 3304(a)(3)(A).

(2) For each specific authority, the Secretary will document the basis for the severe shortage or critical hiring need, consistent with 5 CFR 337.204(b) or 337.205(b), as applicable.

(3) The Secretary will terminate or modify a specific authority to make appointments under this section when it determines that the severe shortage or critical need upon which the authority was based no longer exists.

(4) The Secretary will prescribe appropriate implementing issuances to administer this authority and will notify OPM of determinations made under this section.

(d) *Time-limited appointing authorities.* (1) The Secretary may prescribe the procedures for appointing employees, the duration of such appointments, and the appropriate uses of time-limited employees. These procedures will preclude the use of employees on term appointments in positions that should be filled on a permanent basis. Term appointments may be used to accomplish permanent work in circumstances